Remarks

This communication is responsive to the office action dated February 03, 2009 and is being timely filed to elicit withdrawal of the final rejection, an allowance of the claims, an advisory opinion from the Examiner, or for consideration on appeal.

In the application, Claims 1-4 are pending. Examiner has issued a final rejection of Claims 1-3 under 35 U. S. C 102(b) as being anticipated by Ogletree U.S. 6,509,348 as evidenced by Ekelund et al BMC Emergency Medicine, 2001, 2(1), 12 pages" for the reasons made of record in Paper No. 2008080-8 and reiterated in the current office action.

Applicants provide amended Claims 1-4 inclusive and arguments believed to overcome Examiner's rejection based on 35 U.S.C 102 (b) and 103(a). The amended claims are designed to be responsive to Examiner's comments regarding the scope of the phrase "consisting essentially of" which applicants accede to only for the purpose of expediting prosecution as discuss below.

Amendments

Applicants have amended Claim 1 to 4 inclusive to remove the phrase "consisting essentially of" and replaced therewith the phrase "consisting of." Applicants have also amended Claim 2 to make said claim independent by incorporating elements of Claim 1. Applicants believe amendments to Claims 1 to 4 inclusive and arguments presented herein obviate Examiner's rejections for anticipation and obviousness. Furthermore, applicants believe no new matter has been introduced by operation of claim amendments herein.

35 U.S.C. 102(b) Rejection

First Examiner argues that the amendment "consisting essentially of" to the claims does not change the rejection, because "consisting essentially" is still open language, and because all that is required in the claims is to administer a compound and then perform a percutaneous coronary intervention procedure in "any order." Applicants beg to differ. Applicants believe that "consisting essentially" is a restrictive language (though less restrictive than "consisting of") that allows the

inclusion of non-essential elements but limits "included" essential elements to those specifically claimed. Thromboxane A_2 receptor antagonists are essential components of the "combination of an ADP receptor antagonist and a thromboxane A_2 receptor antagonist optionally in combination with a cholesterol lowering agent or aspirin and a method of using said combination" as disclosed in the Ogletree reference. Furthermore, applicants do not claim the use of "a compound" but claim the use of the specific compound of formula I which is also known as CS-747 or prasugrel.

Applicants believe Examiner has misperceived the invention by continuing to cite Ogletree as an anticipating reference under 35 U.S. C. 102(b). Ogletree specifically teaches and requires "the combination of an ADP receptor antagonist and a thromboxane A_2 receptor antagonist optionally in combination with a cholesterol lowering agent or aspirin and a method of using said combination." Thus, thromboxane A_2 receptor antagonist is a necessary component of the Ogletree invention. Applicants point out to Examiner that "[To] anticipate a claim a single prior art reference must expressly or inherently disclose each claim limitation . . . But disclosure of each element is not quite enough –this court has long held that "[a]nticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim." NetMoneIn, Inc., v. Verisign Inc., (Fed. Cir. 2008), quoting Finisar Corp. v. DirectTV Group, Inc., (Fed. Cir. 2008).

Ogletree does not teach the use of an ADP platelet aggregator inhibitor or the compound of the present invention absent a thromboxane A_2 receptor antagonist for the treatment of acute coronary syndromes or recurrence thereof in conjunction with percutaneous coronary intervention for a patient in need thereof optionally in combination with aspirin as disclosed and claimed in the instant application.

Second, Examiner cites to specific disclosures of the Ogletree invention which will be addressed in turn below.

1. Examiner cites to Col 3, lines 53-65 of Ogletree as disclosing "CS-747 for the treatment of cardiovascular ischemic, myocardial infarction after percutaneous coronary intervention." Applicants disagree with Examiner's characterization of the Ogletree disclosure. Specifically, Ogletree at Col. 3, lines 530-65 discloses:

> "Furthermore, in accordance with the present invention , a method is provided for preventing or inhibiting onset of ischemic events including cardiovascular, cerebrovascular and peripheral vascular events, such as myocardial infarction, unstable and stable angina, acute reocclusion after percutaneous transluminal coronary angioplasty PTCA), restenosis after PTCA, thrombotic stroke, transient ischemic attack, reversible ischemic neurological deficit, and intermittent claudication wherein a combination of an ADP-receptor blocking antiplatelet drug, such as clopidogrel, and a thromboxane A_2 receptor antagonist , such as ifetroban, and optionally a cholesterol lowering agent, is administered in therapeutic effective amounts" (emphasis added).

Applicants reiterate that the above disclosure relates to the invention which is provided in the section entitled "Field of the Invention" as a combination of an ADP receptor antagonist and a thromboxane A_2 receptor antagonist optionally in combination with other agents. (See col. 1, lines 12-19) While other agents are optional the invention specifically requires a combination of an ADP receptor antagonist and a thromboxane A_2 receptor antagonist.

2. Examiner also states "Ogletree also discloses aspirin may be used with the claimed compound (see col. 21, lines 31-37 as required by the instant claims 2 and 3)." Again, Applicants believe Examiner misperceives the antecedent basis for this disclosure which is that Aspirin may optionally be present in the invention, the invention being, the combination of an ADP receptor antagonist and a thromboxane A_2 receptor antagonist. While the instant invention discloses and claims the optional use of aspirin as does the Ogletree invention, Ogletree requires the combination of an ADP receptor antagonist and a thromboxane A_2 receptor antagonist. A thromboxane A_2 receptor antagonist is not required for the practice of the present invention.

35 U.S.C. 103(a) Rejection

Examiner has issued a final rejection of Claims 1-4 under 35 U.S.C.103(a) as being unpatentable over Asai et al., EP1350511 translated version of WO 02/051412 in view of Mehta et al., The Lancet 358, 2001 for the reasons made of record in Paper No. 20080808 and as presented in the present final office action.

Applicants believe that Examiner has conflated the disclosures of Wiviott et al., (as paraphrased and copied into applicants' response) with applicants' arguments.

Applicants argued in the response filed November 07, 2008, that "Applicants have discovered a unique property of the compound of the present invention which is its unexpectedly superior (clinical) efficacy compared to clopidogrel, the current clinical standard in the field, for the treatment of acute coronary syndrome in conjunction with percutaneous coronary intervention optionally in combination with aspirin" *emphasis added*. Examiner took issue with the disclosure of the Wiviott publication as paraphrased and copied into the office action rather than the key arguments/assertions made by applicants in response to the obviousness rejection.

The Asai reference singly or in combination with the Mehta reference and/or common knowledge of one of skill in the art did not teach, suggest or motivate one of skill in the art or provide a reasonable expectation of the statistically significant clinically superior outcomes for the compound of formula I compared to clopidogrel in patients with acute coronary syndromes undergoing PCI. The statistically significant clinically superior outcomes with prasugrel compared to clopidogrel were unexpected. Significantly reduced rates of ischemic complications and increased bleeding are only a few of the many observations which resulted in the determined outcome of clinical superiority against the current standard in antiplatelet therapy.

Examiner's fixation on reduced rates of ischemic complications and increased risk of bleeding are unintended consequences of applicants' presentation of the argument in the response filed November 07, 2008, by copying and/or paraphrasing summaries of the Wiviott article.

For completeness, Applicants' restate their arguments to support unobvious in view of the Asia reference below.

Applicants submit that Asai discloses the use of the compound of present invention for many uses including as a treatment in stent therapy. Specifically, Asai et al discloses:

> "Thus the use of pharmaceutical compositions of compounds of the present invention for the "prevention or treatment of multiple diseases including diseases caused by thrombus or embolisms, for example diseases induced by platelet aggregation, including stable and unstable angina pectoris, and so forth; cardiovascular or cerebrovascular disorders, e.g., thromboembolism, associated with atherosclerosis or diabetes mellitus, such as unstable angina pectoris, cerebral ischemic insult

> or restenosis due to angioplasty, endarterectomy or stent therapy; or thromboembolism caused by thromboembolization such as recurrent embolism after degradation of the original thrombus, embolism, ischemia-induced dementia, peripheral arteriopathy, thromboembolization in the vascular prosthesis, or in the bypass between the aorta and the coronary artery."

Applicants submit that from the many uses of the compound as disclosed in Asai, one of skill in the art is not apprized of the significant unexpected property of the compound of the present invention. Asai fails to provide teaching, suggestion or reasonable direction to enable one of skill in the art to arrive at the present invention.

Applicants have discovered a unique property of the compound of the present invention which is its unexpectedly superior (clinical) efficacy compared to clopidogrel, the current clinical standard in the field, for the treatment of acute coronary syndrome in conjunction with percutaneous coronary intervention optionally in combination with aspirin.

Therefore, the above disclosures notwithstanding, Applicants believe the present claims 1-4 are unobvious over the Asai reference in view of the Mehta reference due to the selection of the present use in view of the numerous uses disclosed in Asai et al, and the discovery of unexpectedly superior clinical results compared to Clopidogrel in the TIMI TRITON-38 study as disclosed in Wiviott et al.

Applicants provide an accompanying PTO Form 1449 and a copy of the Wiviott et al., article which applicants inadvertently failed to submit previously.

For all of the above reasons including the amendments herein Applicants respectfully request reconsideration and withdrawal of the final rejections under 102(b) and 103(a) or to issue an advisory opinion in light of the amendments, arguments and clarifications provided herein.

Respectfully submitted,

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